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1624

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	10/070,791
Filing Date	August 5, 2002
First Named Inventor	Piet Herdewijn
Art Unit	1624
Examiner Name	Mark L. Berch
Total Number of Pages in This Submission: 4	Attorney Docket Number: 0702-020249

ENCLOSURES (Check all that apply)

- ☐ Fee Transmittal Form
- ☒ Fee Attached
- ☐ Preliminary Amendment
 - ☐ After Final
 - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Documents
- ☐ Response to Missing Parts/ Incomplete Application
 - ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawings (1 sheet attached to Amendment.)
- ☐ Licensing-related Papers
- ☐ Petition for Extension of Time
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s)_____
- ☐ After Allowance communication to Technology Center (TC)
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☒ Other Enclosure(s) (please identify below)

 Petition From Requirement For Restriction Under C.F.R. § 1.144 (3 pp.)

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Gwen R. Wood, Ph.D. Registration No. 51,027
Signature	Gwen R. Wood
Date	April 13, 2005

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name	Helen Gerace		
Signature	Helen Gerace	Date	April 13, 2005

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OIPE JC1900
APR 1 8 2005
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/070,791	Confirmation No. 9473
Applicants	:	Piet Herdewijn et al.	
Filed	:	August 5, 2002	
Title	:	Carbocyclic Nucleosides and Process for Obtaining Such	
Group Art Unit	:	1624	
Examiner	:	Mark L. Berch	
Customer No.	:	28289	

Attention: Director of Art Unit 1624
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION FROM REQUIREMENT FOR RESTRICTION UNDER C.F.R. § 1.144

Sir:

Applicants respectfully request that the restriction requirement issued by the Examiner in the Office Action, dated May 18, 2004, be reconsidered under C.F.R. § 1.144, and that non-elected claims 8, 9, 11, 13 and 24-34, as well as those parts of claims 1-7, 10, 12, 14-23, 35-39, 41, 43 and 44 be rejoined in this application. In support of this petition, the undersigned sets forth as follows:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Attention: Director of GAU 1624, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 13, 2005.

Helen Gerace
(Name of Person Mailing Paper)

Helen Gerace April 13, 2005
Signature Date

1. The Examiner asserted in an Office Action, dated October 14, 2004, that the "traversal on the grounds that the general inventive concept is the cyclohexenyl moiety" is "not found persuasive because in fact, a cyclohexenyl ring is not required to be present" in the compounds of the invention and that "the ring can in fact be e.g. a benzene ring." The Examiner further asserted that the "nucleobase is essential for antiviral activity and hence restriction is proper on the basis of its nature."

2. In a response to the Office Action of October 14, 2004, Applicants amended base claim 1 to recite that "Z represents the presence of one double bond in the six membered carbocylic ring." Thus, the claimed invention now is limited solely to compounds that contain a cyclohexenyl moiety.

3. Applicants hereby submit that the single technical inventive feature that links all of the claims is an unsaturated cyclohexenyl moiety, and not a nucleobase or nucleobase analogue (referred to as "B") asserted by the Examiner.

4. In particular, the unsaturated cyclohexenyl moiety is critical for providing the antiviral activity of the claimed compounds because the specific biological activity of the claimed compounds is due to the sugar analogue portion of the cyclohexenyl moiety and not from the use of a nucleobase or nucleobase analogue.

5. In this regard, comparison can be made to other antiviral compounds, such as 3'-azido-3'-deoxythymidine (AZT) and 3'-thai-2',3'-dideoxycytidine (3-TC), which all are nucleobase analogues with modifications in the sugar portion of the compound, similar to the compounds of the claimed invention. Furthermore, AZT and 3-TC also have the same nucleobases as the claimed invention but differ from the claimed invention with regard to their respective sugar moieties.

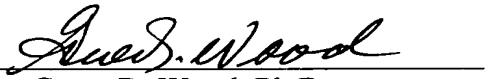
6. Applicants hereby stipulate that the related inventions to which the Examiner has issued a restriction requirement, namely, the nucleobase or nucleobase analogues, are not patentable over one another, and point out that such a "clear and unambiguous admission that the inventions are not patentable over each other" is sufficient to withdraw the restriction requirement issued by the Examiner. In re Lee, 199 U.S.P.Q. 108, 109 (Comm'r Pats. 1978).

The Commissioner of Patents and Trademarks is hereby authorized to charge any fees which may be required to Deposit Account No. 23-0650.

Applicants respectfully request reconsideration and withdrawal of the restriction requirement.

Respectfully submitted,

THE WEBB LAW FIRM

By 

Gwen R. Wood, Ph.D.
Registration No. 51,027
Attorney for Applicants
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: 412-471-8815
Facsimile: 412-471-4094
E-mail: webblaw@webblaw.com